IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
THURSDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE G. BIKSHAPATHY
WRIT PETITION NO : 5935 of 1994

Between:
A.P. State Co.op.Union Ltd , rep.by it's Managing director,
Gunfoundry,Hyderabad.

..... PETITIONER

AND

1 The Appellate Authority Under the payment of Gratuity Act and Dy.commissioner of Labour,
Anjaiah Bhavan, RTC 'X' Road,
Hyderabad.
2 The Authority Under payment of Gratuity Act Asst.Commissioner of Labour,
Circle –II, Anjaiah Bhavan, RTC 'X' Road,
Hyderabad.
3 T.Satyam,
H.No.8-3-231/A/338, Sri Krishnagar,Yosufguda,
Hyderabad-500 045.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Order, Direction or a writ particularly one in the nature of "WRIT OF CERITORARI" and after calling for the records from the first respondent in PGNo.1/93 and quash the same and pass.

For the Petitioner:MR.S.RAVINDRANATH

For the Respondent No.: GP FOR LABOUR

The Court Made the Following :

ORDER:

1. This Writ Petition is filed challenging the order passed by the second respondent-Authority under the Payment of Gratuity Act and Dy. Commissioner of Labour in Case No. PG/1/93 dated 12.5.1993 as confirmed by the appellate authority-first respondent herein in Case No. PG/1/93 dated 22.3.1994.

2. The third respondent was employed in Andhra Pradesh State Cooperative Union Limited-Petitioner herein. On attaining the age of superannuation, he was retired from service. Thereafter, the claim was made by the third respondent for payment of gratuity under the provisions of Payment of Gratuity Act. The petitioner-Management calculated the gratuity of the workman at Rs. 38,672.40 in accordance with the provisions of the Gratuity Act and after deducting the departmental dues the balance was paid. Not satisfied with the same, he filed an application before the Payment of Gratuity Authority claiming Rs. 50,000/- towards gratuity and also seeking declaration that the amount of Rs. 12,769.98 recovered from the gratuity was illegal and contrary to law. The learned controlling authority allowed the application by an order dated 12.5.1993 and thereafter, the appeal filed by the Petitioner-Management was also dismissed. Aggrieved by the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner submits that the petitioner is governed by the

provisions of payment of Gratuity Act and the G.O sought to be relied on by the petitioner is not applicable to the employee and therefore, the authority ought not to have allowed the claim of the petitioner on the basis of the said G.O. The learned counsel would also submit that since the departmental dues are pending against the employee to the tune of Rs. 12,769.98 and it is open for the department to withhold the same for the gratuity amount and the same is permissible under the provisions of Payment of Gratuity Act. Thus he submits that the order of the Controlling authority as confirmed by the appellate authority is only illegal.

4. I have heard the learned counsel appearing for the third respondent and also the learned Government
Pleader.

It is not in dispute that the third respondent made an application under the provisions of Payment of Gratuity Act. It is the contention of the petitioner that the gratuity was assessed in accordance with the said provisions of Payment of Gratuity Act up to the age of sixty years. But the G.O, which is relied on by the Controlling Authority i.e G.O.Ms.No. 159 dated 4.4.1989 cannot be said to be applicable to the third respondent as he is an employee under the Cooperative Union and this aspect was not considered by the authority and obviously, GO cannot be made applicable to the third respondent who is governed by the provisions of the Gratuity Act. When once it is held that the GO is not applicable, the order of Controlling Authority as confirmed by the appellate authority are not sustainable in law and accordingly they are set aside. It is also not in dispute that the departmental dues are liable to be deducted from the gratuity payable to the petitioner as the employee has taken loan form the Trust. Under those circumstances, recovery of Rs. 12,769.90 cannot be said to be illegal and contrary to law.

6. Accordingly, the Writ Petition is allowed and the order of the Controlling Authority as well as the order of the appellate authority are set aside. No costs.

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G. BIKSHAPATHY,J

17.06.2004.
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ASSISTNAT REGISTRAR

To
1 The Appellate Authority Under the payment of Gratuity Act and Dy.commissioner of Labour, Anjaiah Bhavan, RTC 'X' Road, Hyderabad.
2 The Authority Under payment of Gratuity Act Asst.Commissioner of Labour,Circle –II, Anjaiah Bhavan, RTC 'X' Road, Hyderabad.
3. 2 CCs to G.P for Labour, High Court Buildings, High Court of A.P, Hyderabad.
4. 2 CD copies.